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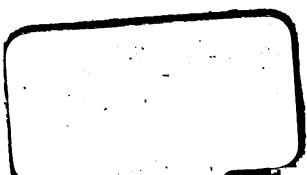
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# A REMONSTRANCE *from the*

ADDRESSED TO THE

RIGHT HON. LORD BROUGHAM,

ON THE

INJUSTICE AND IMPOLICY

OF THE PROPOSED BILL

FOR THE

ABOLITION OF IMPRISONMENT FOR DEBT.

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"In this dilemma it is just that the interest of the creditor should be preferred."  
Mr. Sergt. STEPHEN.

"Those many had not dared to do that evil,  
If the first man that dared th' edict infringe,  
Had answered for his deed."

MEASURE FOR MEASURE.

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LONDON:

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CORNHILL,

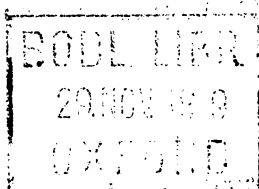
1838.

*L. Eng. C. 29 e. Delt 5*

- I. If the power of arrest in execution be taken away, the creditor will be much more defeated by the concealment of the debtor's property.
  - II. If the power of arrest in execution be taken away, the debtor without property will have no inducement to make those efforts by which he now often succeeds in obtaining the means of payment.
  - III. If the power of arrest in execution be taken away, the burthen and risk of realizing the property of the debtor will be constantly thrown upon the creditor, instead of being incumbent, as they ought to be, upon the debtor himself.
  - IV. The abolition of arrest in execution, will encourage the practice of contracting debts improvidently, or with the direct purpose of defrauding the creditor, and will also encourage the debtor to dissipate the property which ought to be applied to the payment of his debts.
- 
- I. If the power of arrest before judgment be taken away, the creditor will be much more frequently defeated by the absconding of the debtor.
  - II. If the power of arrest before judgment be taken away, the creditor will be much more frequently defeated by the removal of property.
  - III. If the power of arrest before judgment be taken away, it will be much more frequently impossible to obtain payment without suit, and the attempt to recover payment by suit will be more frequently unsuccessful, and will be attended, in general, with more delay and expense.
  - IV. If the power of arrest before judgment be taken away, it will (like the abolition of arrest in execution,) encourage the rash and fraudulent contracting of debt, and the dissipation of property out of which the creditor should be paid.

Sergeant STEPHEN,

( One of the Common Law Commissioners. )



## A LETTER,

&c.

TO THE RIGHT HONOURABLE LORD BROUGHAM,

MY LORD,

I AM a tradesman, and not a lawyer; I know much of some branches of trade; I know nothing of any branch of the law, except the costs and difficulties it still presents to the injured, in the pursuit of redress and protection against injurers. I fear that the converse is the case with those who legislate for the protection or encouragement of trade. They know nothing of trade; they know much of law,—its profitable and artful operations,—by which the property both of plaintiff and defendant, creditor and debtor, is transferred into the pockets of its professors. Law, I fear, is like medicine, of the least possible benefit to the buyers of it; very profitable to the sellers of it. Of the measure now under investigation, I know but little, except from your Lordship's own lips, whence, in common with the rest of the enquiring world, I have learned many things useful to know, and I think I cannot err in taking your speech as the best exposition, and the best vindication, of the Bill. If I truly understand its principles, and the arguments in its defence, it will prove, in the end, to be another instance in which the interests of the industrious many have been sacrificed to the idle and dissolute few, and the ends and objects for which laws have been framed entirely subverted by the influence of that new species of deceitful humanity which casts a withering look of indifference and neglect upon the man of self-restraining virtue, while it protects and defends, and weeps over, the self-inflicted misfortunes of knaves and rascals.—Yet I admit, that I greatly distrust my own judgment in dissenting from the proposed measure; seeing that it is supported by the chief men of the country, persons who take the initiative in most of the useful reforms that are going on, and whose dicta have been usually of authority sufficient to decide the approbation of individuals like myself.

The present measure is one of too much practical influence, to allow of any blind deference to superior authority; those who are wiser than others must not unadvisably make a change which will weaken the securities society has afforded to the property of the industrious classes of the community; a change which will most imminently endanger the settlement of thousands of trading affairs, and place in jeopardy *millions* of wealth; wealth earned and claimed by creditors, industrious and provident small capitalists;—wealth, at this instant, in the hands of that portion of the debtor class who cannot punctually pay, and who are usually the extravagant, the improvident, and the ill conditioned, in all that respects moral government.

It does not appear, from your Lordship's speech, that the great mone-

tary transactions will be affected by the Bill; the single debts of thousands, and tens of thousands, have securities connected with them, which render power over the person of the debtor of little or no consequence; but over all those smaller transactions, which really constitute the great mass of trading affairs, this Bill will exercise an influence of which few persons in your Lordship's station of life have any knowledge.

The Bill divides itself into two parts, that which it enacts, and that which it repeals; it enacts new regulations, and bestows new powers upon the creditor, by which portions of property, hitherto held sacred, are made available to the liquidation of just debts; this is excellent; no man who is honest himself, or who sympathizes with a class or "order" of men, of only honest habits, can object to the sternest regulations by which the uttermost farthing of property, whether it consist of goods, houses, or money, investments in the funds, or in land, may be all seized, and appropriated to the payment of just debts voluntarily contracted. If such power can be given over property, hitherto privileged against the payment of debts, and that without causing difficulty, delay, and expense, greater than the value of the effects when obtained, every good citizen will hail it as a most valuable commercial advantage, and what is much more important, an inestimable addition to the moral training of persons, especially in the higher class, whose notions on all that relates to credit and trade, is lamentably imperfect, for a commercial country like this. With regard to other property not so privileged, creditors now suffer, and will continue to suffer, not because the law, as it stands, does not arm them with power over it, but because the property cannot be made visible and tangible. Property, in a thousand ways, is removed from the reach of the creditor, and by fraud and collusion all judicial evidence is destroyed; "it is easy to conceal fortunes and carry millions in a portfolio." The impediment is not in getting possession of the property, so far as the powers of the law are concerned, but in making it to appear that the property exists; most commonly the difficulties lie in the shameful law expenses that are incurred in bankruptcies and other legal proceedings, which render success a loss instead of a gain. A fraudulent debtor offered a composition of seven shillings in the pound, when it was notorious that he could have paid twenty; he was made a bankrupt, and oppressive law expenses were incurred, that reduced the dividend to one shilling and sixpence; but the notorious infamy of the man's conduct, his suffering by imprisonment, and, further, his ruin, in consequence of loss of character, acted as a salutary warning to all debtors within the influence of his example. A short time since an imprisoned debtor applied for his discharge, before the insolvent debtor's court at Hertford, and it was granted upon condition that forty pounds should be paid into court for the benefit of the creditors; this was done, and *ten pounds* were charged and paid to an attorney practising in that court, for taking out the money and paying it to the assignees! I shall have something to remark on the salutary effects of the various punishments endured by debtors, which appear to be altogether lost sight of in these enquiries; meanwhile, I repeat, that it is the enormous expense incurred in the exercise of the powers, that the law now gives to the creditor over property, and not the feebleness of the powers themselves, that is the great encouragement to dishonest practices. Make a man a bankrupt, and there is power enough to collect his debts and seize

all his property, except he enjoy the privileges granted to an "order" of outlaws; but there is not one insolvency in fifty that is worth taking into the bankruptcy court, because the expenses carry away nearly all the assets. In small affairs when the property is said to be all squandered, a dividend is offered by the insolvent or his friends, to save him from prison, which the creditor's rarely refuse, and the man gets quietly out of his scrape, because any law proceedings would impoverish the whole concern. When the debtor lives in a country town, even the charges of coach hire and incidental expenses, coupled with the loss attending absence from home, deter creditors from making a personal investigation, accounts may be falsified, goods removed, and to all this the creditor must submit. Some time since a man offered a composition a very few weeks after he had received a parcel of goods; he lived at a distance, and it was not deemed expedient to incur the expenses necessary to an investigation; just before affairs were settled, a person went into a shop in a country village, a few miles from the debtor's residence, and recognized the above parcel of goods by the direction; he informed the creditor, and, to avoid exposure and trouble, the parcel was returned. This discovery was the result of mere accident; no law can give power over that which is not known to exist, nor will its powers ever be available, if the expenses attending their exercise be equal, or nearly equal, to the property when recovered. The Bill can bestow no new power over debtor's effects, unless it manufacture some of the royal pinchers of persuasion employed in good old times, to compel men to discover their hidden gold; but a Bill which shortens the procedure, and materially diminishes the expense, may indeed do something to increase the facilities of obtaining debtor's effects. The law is *now* waiting, hot and ready, like Alderman Birch's turtle soup, for every body, without distinction, who can only pay for it. Justice must be cheap, or it is no justice at all, said Bentham. Any other power over property will turn out to be only a power of words; a manœuvre practised upon the humane public to induce them to surrender a very efficient instrument upon the reluctant will of the debtor.

With regard to the repealing clauses,—those by which the powers now enjoyed by the creditor over the person of the debtor are to be curtailed,—I fear there is much error in judgment. The debtor is threatened with imprisonment, in order that the evil endured may compel him or his friends to pay his debts, or he is imprisoned as a punishment for having contracted debts that he could not pay, when he contracted them, or which he has subsequently become unable to pay; or he is imprisoned that he may not escape, with or without the property of his creditors. Much objection is made to imprisonment by *mesne* process, since it deprives a man of his liberty, upon the *ex parte* evidence of the plaintiff, which has all the injustice of punishment (for imprisonment is punishment) inflicted before conviction. Some cases, it is true, do occur, such as are cited by your Lordship, of extreme hardship and cruelty under arrest by *mesne* process; but before that power is abrogated by reason of such extreme, and as I believe rare abuse, it is necessary to enquire *what proportion* such cases bear to the whole number of arrests by *mesne* process. A solicitor of considerable practice in this department of the law, told me, that he did not believe



there were three vexatious or vindictive arrests in a hundred, and even of those that were vexatious, it was rare indeed that the persons arrested had not rendered themselves liable to the debt; but who, it is true, would not have been put into prison if they had not fallen into the hands of disreputable solicitors,—those pests of society,—who frequently arrest on bills of exchange, merely that they may get costs. Such arrests as these are not in consequence of regular business transactions, but are usually connected with disreputable engagements, whereby needy tradesmen have raised money injudiciously, or when a man has foolishly become security for another, or where funds have been obtained to meet the demands of extravagance, or in the many ways in which imprudent persons get into pecuniary difficulties. It is desirable to give every protection even to these, the needy, the careless, and the improvident; but it is too much to remove a power from the hands of ninety-seven just creditors, if it shall appear to be useful to them, merely because three unjust creditors, or their agents, misuse that power. It is too much to enfeeble the machinery employed to compel the payment of hundreds of just debts, because persons who are scarcely able to take care of themselves, now and then get into undeserved trouble; or because, once in a quarter of a century, a foreign minister is arrested shamefully for £80,000; or because a man, just starting for a foreign country, has been infamously thrown into prison by his competitor. Surely when we consider the bungling apparatus of English legislation, that is not the worst part of it which, while it gives security to ninety-seven proper objects, oppresses only three unfortunate and innocent individuals; it does seem rather rash, because a certain practice is attended by a given small amount of evil, that the practice itself shall be abrogated rather than improved. For all such flagitious cases of arrest, some remedy, in the shape of a severe and disgraceful punishment, might be found. The man who has imprisoned his competitor, to prevent his reaching a foreign port with a cargo of merchandise before himself, is a fit object for national vengeance; in a good state of society the punishment of the one, and the compensation to the other, would not be left to the small and inadequate resources of the individuals themselves, but the nation would interfere, government steamers, and government cutters, would shoot across the Atlantic in pursuit of the evil doer, and thousands of the nation's wealth, would, if necessary, be spent to punish him who had wronged his neighbour of hundreds. All the machinery of government should be put into activity to remedy and punish such cases of individual wrong, and if these be found inefficient, it will be time enough to remove altogether instruments useful in compelling men to pay their debts. The same reasoning which is thus used against *mesne* process for debt, is equally applicable to all cases, where persons accused or suspected of offences are deprived of their liberty. As well may it be said that no man who is suspected of picking pockets shall be given into custody of the police, or committed by an amateur magistrate to take his trial, because he may be ultimately proved innocent of the charge laid against him. Innocent persons may be sometimes, but not often, thus wrongfully accused; take the number of persons who are thus annually deprived of their liberty, either for a few hours, days, or

weeks, and it will be found quite as great as the number of those who are vindictively or unjustly imprisoned for debt.

Your Lordship argues, that imprisonment, especially by *mesne* process, is a useless punishment, (and if useless, then I am willing to admit cruel,) because in most instances the parties recover not even the costs of the arrest, much less the original debt; and you instance an admission to this effect, by a trader, whose transactions reach to about £300,000 a year. It appears to me that you might as well argue, that persons should not be imprisoned for picking pockets, or stealing from dwelling houses, because in most instances prosecutors have been losers, not only of the property stolen, but also of the expenses attending the prosecution. The question is, not so much how many of the debts due by persons imprisoned are paid, but what proportion of debts are paid by the totality of debtors through fear of that imprisonment. The question is, not how many handkerchiefs are restored through the imprisonment of the stealers of them, but how many are preserved in the pockets of the owners through fear of the imprisonment. Hanging the murderer will not bring to life the murdered man, but it will prevent many men from being murdered. What amount of any crime is prevented by a given punishment is not easily ascertained, and how many debts are paid through fear of imprisonment it is also not easy to ascertain; but the value of imprisonment for debt is more easily proved by something like direct evidence, than can the value of imprisonment for any other offence. A crime is committed, and the offender if caught is punished; what is the value of the fear of a similar fate in others no man can calculate; it will perhaps vary in every individual, we only know the aggregate of those who are *not* influenced by the fear, but we cannot tell how many look on and are deterred by the fear. With regard to debtors, every man engaged in a business of credit, and especially in a business where each debt is small in amount, has experience of the influence of the fear in compelling a reluctant debtor to pay. In my own experience the effect of the fear is considerable, and although I am willing to admit with the witness referred to by your Lordship, that I have seldom been other than a loser, both of debt and costs, when parties have actually been thrown into prison, yet I know that many of my debtors who have neglected frequent applications for payment, or who have answered attorney's letters only by plausible excuses and protractions, and who have shuffled until the last hour, have paid their debt immediately when the process has been served. This is really something like evidence of the influence of the fear of arrest. There are many persons who will never pay until compelled by law proceedings; some remarkable instances have come under my notice. A man bought a parcel of goods; at the end of eighteen months he was arrested for the amount; he came to London and paid the debt and costs; his prompt attention to the arrest, inclined the creditor to think that he had been harshly treated; as a recompense, and solely from kind feelings, he was offered credit again; not paying at the term of credit he was arrested a second time, when he promptly paid the debt and costs as before; the compliment was not passed a third time. A power which compels payment from such debtors, ought not to be destroyed upon mere hypothetical premises.\* Stronger and more specific

\* Just before going to press, a letter has been received from a debtor, of which a copy is subjoined, as it demonstrates the specific effect of imprisonment, or the fear of

evidence can be adduced in its favour, than for the efficiency of any punishment for any other offence, for I hold that the non payment of a due debt must be assumed legally and morally to be an offence, or delinquency, until the inability is proved to arise from misfortune. In every case of pecuniary delinquency, the proof of its being caused by real misfortune,—the onus of proof that there was no fraud, no extravagance, no bad management, *should be put upon the debtor*; the creditor has a claim to come into court with the *assumption of delinquency*, but full and almost costless means should be afforded the debtor to prove the contrary.

Your Lordship states that the great mass of arrests are only for small debts of £20, £40, or £50, as if such debts were of little consequence in the argument. Why these are just the sort of debts in which is absorbed the great capital of the trading community. Persons not acquainted with the nature of trading affairs, are apt to consider that protection should chiefly be given to large sums of £100 or £200, but the truth is, the lower you go in amount, the more numerous are the parties interested, and the more important become those small amounts. Large debts are comparatively unfrequent, and, as was before observed, are usually protected by specific securities; the great mass of the trading capital of the nation, is distributed over London and the provinces, in small parcels under £100; where one wholesale house in the City has debts which average above £100, two will average under £50, three under £40, &c., &c.; retail debts are of course much smaller; these are the debts for the payment of which there is little or no security but that which arises from the fear of imprisonment, and what is the value of this fear further evidence should have been obtained from traders and solicitors. If a return were obtained from several solicitors, of the number of debts paid through their instrumentality, when all application from the creditor himself had failed, a return of the number of debts paid when arrest had been all but executed, I am quite certain the result would shew that a very large proportion had been paid by parties who *preferred at last to pay rather than go to prison*.

Your Lordship observes, as a hardship arising from arrest, that a man's relations and friends are thereby urged to pay his debts, to avoid the obloquy of his imprisonment. It is clear there is little other obligation upon them to do this, than that which arises from pride of character, they do it to save the honour of the family, they do it from sympathy with the individual, who is their relative or friend, and surely if a sacrifice is to be made to family honour, or family affection, the sacrifice should be made by those really interested in preserving it, and not by creditors, who have only a pecuniary claim upon a party, by whose delinquency they are themselves rendered liable to lose their own honour and credit, too often indeed lost by the dishonourable conduct of debtors. I cannot,

it. The debt is £5, and was contracted in 1832.

"Wishing if possible to avoid being driven to prison, I take the liberty of offering you 5s. in the pound for your debt and expenses. I trust you will consider my reduced circumstances, and my having to support a large family, and accept the only offer I can make."

The offer will be accepted by the creditor, *out of consideration to his large family*, although the debtor who became insolvent through drunkenness and inattention, had himself no consideration for that family for whose support he now asks assistance from his creditor.

understand how your Lordship can adduce such an argument as this, you, who to your honour, have been the steady and consistent advocate of the New Poor Law, which requires that relatives, not by the influence of pride of character, but by the more stern and direct influence of legal enactment, shall provide for their indigent relatives. Now, if it be no hardship, no injustice, to compel a man who has but a few shillings per week for himself and his family, to spare something for his destitute father, son, or brother, to save him from a pauper-house, surely it can be no hardship to induce the same connexions to come forward, only if they choose, and pay a debt to save their relations from a debtor's prison. Whatever gives relations an interest in the good conduct of one another, whether by the mere influence of honour and opinion, as in the case of the insolvent debtor, or by specific law, as in the case of the pauper, constitutes one of the most valuable and interesting of motives to good example and care in education, and establishes a domestic superintendence, and police, infinitely superior to the wisest laws. Nobody is so fit, nobody has so strong a motive, to take care of a person as his relations, and whatever removes from them a portion of the obloquy attending his misconduct, weakens that motive, and produces evil.

It is observed by your Lordship, that the goods, and not the body of the debtor, are of use to the creditor; true, and you may be assured, that only in the extremely small number of cases, before referred to, does a creditor seize the body of the debtor, for any other purpose than that of enforcing payment of the debt. In some cases of very flagrant rascality, not uncommon, the debtor is imprisoned as a punishment, which punishment, even when awarded by a court of insolvency or bankruptcy, is mild and merciful compared with his offence. You speak of the absurdity of putting a man in prison, and thereby preventing his earning money wherewith to pay his debts. How far the exertions of such debtors as are usually imprisoned can be made available for that purpose is not easily ascertained; debtors are of very various sorts, many are the worst of labourers, idle, careless, unskilful, or they would not be in law-trouble. It would be no easy matter to find a profitable direction for the nobleman who lately figured in the Insolvent Debtors Court; in breaking stones he would not earn the value of his hammer; in skilled labour of any kind, it is to be feared he would be found equally deficient; in intellectual labour he would be, as the scavenger said to his rival scavenger, "no-where."

It is not said, if there be in this Bill any provision to attach wages; if there be, some additional security will be afforded, rather apparent however than real. Mechanics can earn their living any where, if they get into debt in one place, to the amount of £20; or £30, they will not remain with their present master and allow of an attachment on their wages; they will rove from one end of the kingdom to the other, or emigrate to foreign countries; they will remain in one place for a year or two, and punctually pay their debts, or they will incur none for a few months, or a year, then they will get credit upon the strength of their good name, and abscond; thus they will live two years, and pay for their commodities only during one year. This conduct is by no means uncommon now, how much more frequent will it become when the creditor has lost all power of detention, instant detention, by arrest; property,

these men have none, the fear of imprisonment is the only means of keeping them from incurring debts they cannot, or will not pay, because by imprisonment they are deprived of the means of supporting themselves, and are rendered liable to lose their situations. Loss of time is loss of money to them, and a mechanic can hardly be imprisoned for two or three months, without losing from ten to twenty pounds, which if he have a wife and family, will be followed by so much suffering, as will tend to keep him from fraud and extravagance.

Clerks, and persons of that class, are more permanently located than mechanics, but if creditors cannot detain them by arrest, they will get into debt, make arrangements for employment in a distant part of the country, and abscond; no better success would attend any attempt to attach their salaries, than is gained by imprisoning them; both modes of proceeding would equally deprive them of the means of paying their debts, for persons would rarely retain in their employment an individual, who was so far in debt, as to compel his creditors to attach his salary, any more than they would retain in their employment one who had been in prison. It is said, but I hope without truth, that persons employed by government, can always arrange for leave of absence, while they expiate their offences against trading morality, by so many weeks confinement in a jail, and then return, enjoy their salaries, and the luxuries out of which they have cheated their creditors. A man who has become insolvent, or in any way compounded with his creditors, would be disqualified under a virtuous government from holding any situation that is paid for out of the public revenue, or if retained, his salary would be attached until the uttermost farthing was paid.

Small tradesmen who sell commodities which they in part buy, and in part manufacture, are to a certain extent labourers, and all retail sellers are partly of the same class, since a portion of their income is derived, not from the profits of stock, but from the wages of superintendence. These persons incur debts, for the non-payment of which they are now liable to imprisonment; if there be assets in stock or debts, the creditor rarely troubles himself about their bodies; if a reasonable dividend be offered, seldom indeed is it that an attempt is made to squeeze out another shilling by incarceration, rarely inflicted or threatened but in cases of manifest fraud, or notorious improvidence. In prison they can do little or nothing to support themselves, out of prison they can do no better, for their stock and credit are alike gone. Imprisonment is a grievous thing to them, it stops their productive labour, it takes them from the management of their business, it returns them home with blasted reputations, and thus the sanctions of the law surround them with strong motives to industry, frugality, diligence, and honourable conduct. They are in the power of their creditors it is true, but that power is, I repeat, rarely abused, and surely it is better that the debtor should be in the power of the creditor, than the creditor should be, more than he is now, in the power of the debtor.

Professional persons, as surgeons, clergymen, &c., can hardly exercise their vocation profitably in prison, however much both may practise there for humanity's sake; to the surgeon, loss of reputation, and absence from business, will be productive of little less than ruin; to the clergyman, loss of reputation, and the discipline of his bishop, are painful enough, and thus the evils attending insolvency, and arrest, in a great

measure suppress misconduct. Whatever property all such persons may have should be applied to the payment of their debts; but the law must retain its power over the person of the debtor, before judgment, that he may not escape, and after judgment, as a punishment.

The attempt to abolish imprisonment for debt has its origin in a diseased and vicious direction of public sympathy,\* an infirmity too general now-a-days, and the common cause of much lax moral conduct, crime, and suffering. The error arises thus; obvious and tangible suffering is before the eye; a man in prison,—a poor debtor,—cast there by a, so called, hard hearted creditor; his wife and family are said to be starving; such a person is no criminal; it is no crime to be poor: debt, you say, my Lord, is not crime, the man is willing to give up all that he has, and surely it can only gratify a vengeful disposition to keep the debtor in prison, while it adds not one farthing to the dividend; this is the way people reason, or rather *feel*. Debt in itself is no crime, the mere act of owing money, is an imperfect contract, which proves nothing as to the conduct of the debtor. Poverty is not crime; but that conduct which usually leads to poverty is criminal, or at least vicious. A debt past due and not paid, involves, say you, no criminality. Homicide *per se* involves no criminality; neither of the debtor nor of the homicide can criminality be predicated, unless we know the time when, manner how, place where, &c. If I kill a man unintentionally, having taken every precaution in using, or protecting the instrument of death, I am an object of unmitigated pity; but my condition will change from absolute pitiable innocence, through every degree of blameworthiness, down to the most abject criminality, according to the degree of care I have taken to avoid endangering life, and the quantity of positive intention to destroy, that was manifested.

Before legislators presume to merge debtors in general, in the class of unfortunate men, it is incumbent that they should know something more than it appears they yet know, of the time when, manner how, &c., they not only contract their debts, but become unable to pay them. After such enquiries they will cease to assert that the mass of debtors are not delinquents; they will then cease to say that misfortune is no crime; applying the term misfortune as they do, to the state of the non-paying debtor; every crime is a misfortune, but not such a misfortune as entitles the culprit to impunity. Every insolvent debtor is an unfortunate man; but not such an unfortunate man as deserves impunity. The principles on which the discussions in Parliament have been conducted, and upon which, indeed, the proposed Bill itself is founded, appear to have a most immoral tendency. They tend when diffused over the land, (as any thing that is said by your Lordship, is diffused, and read, and believed, from Berwick-upon-Tweed to the Land's End,) to relax the stern principles of commercial morality, weaken the censure due to the conduct that causes insolvency, enfeeble the motives, always feeble enough in all common minds, to abstain from immediate indulgences, and to pursue that steady industry by which alone the million can save themselves from pecuniary difficulties. The law, and the lawmaker,

\* Archbishop Whately, in his remarks upon sympathy with criminals, relates, that in Corsica an assassin may be hired for a few shillings; but an executioner, to behead a judicially condemned malefactor, can only be obtained with great difficulty and expense, and is obliged after performing his duty to flee.

should strengthen all the sanctions against such immorality, and not teach the feeble minded multitude that pecuniary distress is attributable to misfortune. The truth is, that by far the greater part of all insolvencies arise from notorious misconduct; the proceedings of the Insolvent Debtors' Court will prove it; the proceedings of the Bankruptcy Court will prove it. I have been informed by a gentleman, one of the able officers of the latter court, whose business it is, as an official assignee, to investigate the cases that come before it, that a case of bankruptcy, arising from misfortune, unavoidable misfortune, is extremely rare. By far the great majority arise from excessive and unjustifiable over trading; most absurd speculations in commodities, merely because the poor speculator "thought they would get up," but why he thought so, he cannot tell; speculations often in hops, in silk, in corn, things with which he is altogether unacquainted; wild and absurd investments in foreign funds, or in joint stocks; these are among the most *innocent* causes of bankruptcy. In a late number of the *Edinburgh Review*, is a very valuable article "on the Principles and Progress of the New Poor-law;" it is therein stated "from some questions put to the official assignees, who must necessarily examine every case, that cases of blameless distress in trade were almost as rare, as cases of unavoidable and blameless poverty. Mr. Green, one of those officers, gives the following return:—

'As far as I can collect from the books and documents furnished by the bankrupts, it seems to me that fourteen have been ruined by speculations in things with which they were unacquainted; three by neglected book-keeping; ten by trading beyond their capital and facile means, and the consequent loss and expense of accommodation bills; forty-nine by expending more than they could reasonably hope their profits would be, though their business yielded a fair return; none by any general distress, or the falling off of any particular branch of trade.'

'Another officer states,—

'The New Court has been open upwards of eighteen months, during which period fifty-two cases of bankruptcy have come under my care. To the best of my judgment, not one of them can be attributed to what may be termed general distress. It is my opinion that thirty-two of these have arisen from an imprudent expenditure, and five partly from that cause, and partly from a pressure on the business in which the bankrupts were employed. Fifteen I attribute to improvident speculations, combined in many instances with an extravagant mode of life. Among these fifteen I find a tailor, in a very small way of business, borrowing money to become the owner of a West-India ship, trading to Jamaica, a concern of which he was totally ignorant; consequently he was cheated in every way, and speedily ruined. A London publican, having a slight knowledge of science, neglects his business here, goes over to France for the purpose of entering into a contract with the French authorities, for the supply of Paris with water. A working goldsmith, never having had £10, takes Saville House, Leicester Square, and engages singers and musicians, for the purpose of establishing concerts. The thirty-two classed as failing through imprudencies in their mode of living, include many whose necessities leading them to resort to accommodation-bill transactions, have become the prey of money lenders, and their attendant harpies, the inferior class of solicitors.'

"These are exemplifications of the general tenor of the whole mass of

returns, which are fully corroborated by inquiries respecting the cases of insolvency brought within the cognizance of the Insolvent Debtors' Court."

Many insolvencies are produced by tradesmen's indolence; they keep no books, or at least imperfect ones, which they never balance; they never take stock; they employ servants, if their trade be extensive, whom they are too indolent even to supervise, and then become insolvent. It is not too much to say, that one half of all the persons engaged in trade, even in London, never take stock at all; they go on year after year without knowing how their affairs stand, and at last, like the child at school, they find but one half-penny left in their pocket. I will venture to say that *not one fourth* of all the persons in the provinces, either manufacturers, tradesmen, or farmers, ever take stock; I do not believe that one half of them ever keep account books, deserving any other name than memorandum books. I personally know sufficient of the concerns of five hundred small tradesmen in the provinces, to be enabled to say, that not one fifth of them ever take stock, or keep even the most ordinary accounts. I am prepared to say of such tradesmen, from carefully prepared tables, giving every advantage, where there has been any doubt as to the causes of their insolvency, that where eight happen from extravagance or dishonesty, two can be referred to misfortune alone; but it is possible that if further examination were made, some delinquency could be made out against the two. Long sickness, calamity by fire, an impoverished neighbourhood, are among the causes that ruin small tradesmen, and render them more or less objects of commiseration.

These statements will be astonishing to your Lordship; they will appear quite contrary to your own experience, and opposed to the enquiries you have made. But it must be remembered, the persons who usually give evidence upon legislative matters, are very superior to the great mass of tradesmen, of whose habits little is known. The remarks here made apply to the inferior but most numerous class of tradesmen. Where one person is to be found in the provinces superior to those described, six at least are only equal, or perhaps inferior to them. They are just the persons liable to arrest, for their affairs are too small to allow of making them bankrupts. I have before me a list of insolvencies, among these persons which have occurred during ten years, and out of eighty-five cases, only four have been made bankrupts, eighteen have passed through the Insolvent Debtors' Court, and most have been compromised without any lawyer assistance, but under fear of arrest. The difficulty and expense attending a legal examination into their small affairs are so considerable, that creditors are entirely in the power of the debtors, except in as far as the fear of imprisonment, followed as it is by loss of time, injury to connection, and a degree of notoriety that prevents their obtaining credit from other wholesale houses, compels them to be somewhat honest.

To abolish *mens* process, because of the few cases of cruelty on the part of creditors, or of involuntary insolvency on the part of debtors, would be just as unwise as to abolish imprisonment for pocket-picking, because a man's hand had once, in the history of accidents, strayed into another's pocket by mistake. The law should assume incapacity to pay a just debt, to be a case of delinquency, just as it does assume a hand in



so suspicious a place as another's pocket, to be a case of delinquency; let the debtor prove that it is not delinquency, but accident, and he shall have every advantage; let the owner of the hand prove the same, and every advantage and recompense, if possible, shall be accorded to him. But in the mean time, the debtor should be detained, if there be good reason to suppose that his detention will secure the property of creditors. To abolish imprisonment for debt, with all its present evils, and because now and then the truly unfortunate unjustly suffer, appears to me as unwise as if the legislature were to prohibit the manufacture of razors, because now and then, men are found who cut their throats instead of their beards. The power of instant arrest must be retained; but full remedies should be provided against its abuse. Parties who apply for writs might be required to attend before a magistrate, or the officers issuing the writ, with witnesses or securities, proving that they are responsible persons, having a local habitation and a name, and not men of straw. They might be required to give security for an adequate sum, to be paid as compensation to the arrested person, if the arrest should turn out to be vexatious, unjust, or cruel. The arrested person ought to have his full and complete remedy, in the obtaining of which the charges should be very small. Mesne process would then be stripped of all its terrific abuses, and would remain a powerful instrument suspended over the heads of all debtors. It would compel payment from a very large number who have no principle, little capital, and whose effects are frequently so situated with regard to amount, distance, or tangibility, that creditors have in fact no power over them, nor can any law give power, without it compels lawyers to work for nothing, coaches to carry passengers for nothing, and creditors' time to be of nothing value; and even then its powers would be nugatory, unless the law revive the use of the thumb-screw to persuade debtors to reveal or disgorge.

It is a favourite doctrine, and one supported by your Lordship, that the abolition of imprisonment for debt will, in the end, diminish the quantity of credit, and curtail its duration; if such a result follow, it will be a proof that this power, as now exercised by creditors, is, or is considered to be, so effectual in enforcing payment by reluctant debtors, that credit will be discontinued when it is removed. If the punishment now inflicted for pocket-picking be removed, fewer pockets will in the end be picked; because people will discover that as the law for which they pay an exorbitant and infamous price, affords no protection to property carried on their persons, they must discontinue that practice altogether. But it is a very convenient practice to carry money in one's pocket, and therefore protection should be afforded in the enjoyment of it. Make this erroneous principle of legislation universal, and there is no convenience or comfort of which people might not be deprived, because it is found easier, and requires less intellect to deny all protection, than to conquer the difficulties connected with its exercise. Stop the importation of oranges, because careless people throw the rinds on the pavement, and other careless people tread on them and fall. Order all fire and candle to be extinguished at sound of curfew, because some careless or wicked people set fire to their houses. A violent and ignorant schoolmaster snatches away and destroys a toy, because he cannot manage the child that makes an ill use of it.

It is a gratuitous assumption that it is desirable to diminish credit in a commercial country, especially by the left-handed invention of refusing protection to the man who *gives* it. Injurious credit is frequently granted, but of a kind most remotely affected by arrest, and just the kind of credit which will still be continued at all risks, although this bill should pass, the unfortunate creditor only being left in a more helpless condition. The pride and aristocratic character of the English people will not brook the imputation cast upon them by a tradesman, who demands payment, on, or rather before, the delivery of the goods. The excessive competition among retail traders reduces them to a state of most abject slavery; they are anxious to sell, and they fear that if they refuse credit somebody else is waiting to take the order from them. Gentlemen, ladies, and families, at the West end of the town will never tolerate what they now call the insolence of tradesmen, who dare to doubt their respectability. Business will become more hazardous, gross profits must be higher, and in the end the public will have to pay higher prices to cover the greater risk. A case like the following is of frequent occurrence in the provinces:—A young clergyman will be employed to do sacred duty in a town, while the regular incumbent is at Bath. During his sojourn he will live at the parsonage, or in ready furnished lodgings; he will buy a horse, with all its gear and appurtenances; he will order a few dozens of wine, and many other creature comforts, with which the tradesmen of the town dare not refuse to supply him; tacitly introduced as he is by the rector or the vicar. He dines with, and attends the card parties of, all the gentlemen in the neighbourhood, and an affront offered to one of their companions would be resented by the whole body. It is reported in the town that the rector is returned; the stage coach is seen at the parsonage gate, a carpet bag is put into the fore-boot, a gentleman in a black great coat is seen to take his seat on the box beside the coachman, and before the unfortunate tradespeople have had time to inform one another who is leaving the place, the coach carries the debtor off, and the debts are left unpaid.

I could hardly open up to your Lordship the nature of the credit given, or rather extorted, from retailers in the province, without inordinately extending these remarks. Tradesmen there are subjected to worse than Egyptian bondage, by the bettermost sort of people to whom they dare not refuse credit, hardly dare they refuse any length of credit. Long, long, after the due term has expired, have I known the lower class of tradesmen go, with fear and trembling, to the great man's back door, to ask as a favour the payment of their overdue account; and I have seen them spurned away with more contumely than a filthy mendicant. Some time since a country tradesman paid me a sum of money, and taking up the last five pound note, he said, Sir, I have walked forty-eight miles to get this note; my customer lives six miles off, and I had to wait upon him four times to get his account paid. This may be extreme, but it is not uncommon, conduct, and it but too truly illustrates the subjection to which tradesmen are reduced; their numbers compel a slavish competition; their incomes are so small that the loss of a customer is a serious affair, and they submit to any kind of indignity rather than offend one. Almost all business is done on credit in the provinces; the barber keeps a penny account of so many shaves; and I have heard of an old dame, who lives by retailing yeast, usually in

half-penny-worths, who gives three and six months credit. It may be said that in most of these cases arrest can afford no protection, for persons will hardly presume to arrest a man of whom they scarcely dare beg the payment of their debt. It is very true that a country tradesman will rarely venture to "trouble" a gentleman, and if he were to do so, most of the gentlemen in the neighbourhood would confederate against him; yet, arrest is a remedy that can be employed; it is a remedy sometimes employed; it is used without compunction upon his reverence or his squireship, when affairs become transferred to assignees or trustees, and that remote contingency which may happen, and does happen now and then, has its salutary effect; it renders these oppressors always liable to imprisonment, a situation somewhat discreditable still in the eyes of the world.

I am quite satisfied that the sympathy usually bestowed upon the debtor is due in almost every case to the creditor alone. Nothing is more false, nothing is more pernicious, than to hold up the debtor as the unfortunate man, the creditor as the delinquent. Many persons give credit very indiscreetly, but such is not the general habit of the creditor class. Excessive competition (which is every day increasing,) induces traders, especially those who have a connection to form, to run great risks, and give credit very improperly. But whatever may be the quantity of wrong that pertains to such creditors, they suffer punishment enough by the loss of their property. Whatever may be their confiding and anxious credulity, the duty of the debtor remains the same; the law, in punishing a fraudulent debtor, punishes him for his fraud, and not for the satisfaction of the foolish creditor. Fraud must not go unpunished, that the sight of its impunity may punish over confiding credulity; one wrong can never make another wrong right. The debtor deserves punishment for his breach of contract, although the creditor may deserve no recompense for his folly. The principle developed by this Bill, and by the dogmas of lawyers, magistrates, and judges, is, that all men are to be assumed knaves in commercial transactions, and that all who do not act in accordance with that assumption are abettors of knavery. If a stranger go into a shop, select a diamond ring, and desire to take it away upon approbation, promising that he will return next day, either with the ring or the money, modern legislation requires the shopkeeper to say, "sir, the laws of my country assume all persons to be rogues, and I am required to treat them as such; I am taught to believe that you are a rogue, and if I let you take away that ring upon your word of honor, I shall be denied all redress, and shall be told by magistrates and judges, that I am an abettor of swindlers; you will go free, I shall be punished, held up to odium, or laughed at." It seems better that every man should be esteemed an honest man; a rogue only when proved to be one; and this might practically be done, if society were omnipotent to catch and punish, without the slightest uncertainty, every individual who took a ring from a shop without paying for it or returning it. Great caution is only required, because human institutions are imperfect.

The wildest and most extravagant credit that was ever given, provided the claim be just, ought not to neutralize the duty of the debtor. Judges strangely misconceive the moral effect of their decisions, they are guilty of gratuitous insolence, when they load over confiding creditors with reproach, and hold up the extravagant debtor as the

unfortunate man. Those who take advantage of the mental infirmities of others, are equally culpable with those who take advantage of their physical infirmities, in any of the affairs of life. Those who delude the credulous, equally deserve punishment with those who delude the most wary; the law deems it so in case of fortune-tellers, if any one of that fraternity be convicted of chousing a silly female out of half-a-crown or a sovereign, he is punished with just severity; and the complaining party is not told that the law can afford her no protection; that she had not used due caution; that she had been credulous, and that the accused must therefore be discharged. The carelessness of a creditor is no plea in favour of a dishonest debtor. If a man walk along the street with his breeches pockets unbuttoned, and stare into shop windows with his hands behind him, the man who steals his purse equally deserves punishment with him who gets the gold from the most cautious man. He who assaults a woman or a drunken man is not to escape punishment because his victim is helpless. Inadvertence, carelessness, credulity, imbecility, or inexperience, are no palliatives to the conduct of him who takes advantage of those infirmities. The principle on which this bill is founded, would subvert the purposes for which laws and governments, with all their costly apparatus, are maintained. People must be alike protected against strength of fist, and strength of strategy. Apply generally your principles that the knavish debtor of the careless creditor shall go free, unless knavery can be proved against him, at a charge perhaps of twice the amount of the debt, and you establish

the good old rule, the simple plan,  
That they should take who have the power,  
And they should keep who can.

It requires great shrewdness, and some years of experience, to detect the arts in daily practice among dishonest persons, who live by deceiving the unwary. A young inexperienced tradesman, who can least bear the loss imposed upon him, is just the one to whom the protection of the law will be most frequently denied. Every tradesman is anxious to sell goods, and if he trust an unworthy person, he is guilty only of an oversight in the pursuit of his honest calling. Surely if such a man thus lose his property by an extravagant debtor, it is too much for magistrates and judges to aggravate his misfortune, by holding him up to ridicule, and by extenuating the conduct of the debtor. Governors, we are told, "should be a terror to evil doers, and a praise to them that do well." Take a case, but too common, and the cruelty of this doctrine must be manifest:—A widow with a large family carries on a small trade; she is naturally anxious to sell goods, but is so inexperienced, that anxiety, coupled with inexperience, will render her of all persons the most liable to be imposed upon; the swindler and the extravagant man, will contract debts with her which they cannot or will not pay; will not the healthy sympathies of mankind be outraged in so extreme a case as this, when such a woman is told that she has not used due caution, and must submit to the consequences, and that if it were not for such hungry rapacious shopkeepers, spendthrifts would not be encouraged, nor swindlers make dishonest gains?

If the advocates of this bill be true prophets; if, as they say, credit will be materially diminished, it will become a subject of serious enquiry

whether great inconvenience may not ensue from a deficiency of the precious metals. If I pay five-pence every day for my newspaper, a certain quantity of silver and copper must be in readiness; but if I pay for it every three or six months, a check upon my banker and the aid of the clearing house, will possibly prevent a single farthing of specie from being employed. A much greater quantity of specie will be required for circulation, when people dare no longer trust their neighbours paltry sums of five or ten pounds, and when the British lawgiver of the nineteenth century has declared that it is no crime to buy wine and horses, and then render one's self unable to pay for them.

The daily and hourly payment for commodities as delivered, will cause a serious loss of time. Small debts in trade usually stand over until they amount to £10 or £20, merely to save the time consumed in paying, receipting, and entering each single transaction. Little more time is required to pay a whole account of ten pounds, consisting of twenty or thirty small items, than to pay each item separately. But when the law has taught every man to be a rogue, and when it has done its best to withdraw all disgrace from pecuniary delinquency, people will no longer dare to trust one another £10 or £20; in consequence of this, the labour consumed in paying accounts will be increased tenfold, and commercial houses must keep a greater number of clerks. Multitudes of business transactions, which are now paid in the aggregate by check, and pass through the usual order of books, will become petty cash transactions, with all their errors and tedious minuteness. If such results follow this bill, the enactment of which will spread distrust, universal and disgraceful, over the land, it will become a perfect nuisance to the trading classes; not even the excise and custom-house regulations, with their array of officers, weighing, and measuring, and prying, into every man's warehouse and cellar, will cause half the vexatious interruption to business. All this is to follow because legislators have adopted the new fancy of some physicians, that *similia similibus curantur*; like cures like; knavery is to be cured by what stimulates to knavery!

Credit encourages industry; there are multitudes of persons of small incomes, who would never possess a single article of luxury or ornament if it were not for credit. They are utterly unable to save up the shillings and the pounds to buy and pay for a watch, a great coat, a looking glass, or a fine table; every hour brings with it some object of immediate and sensual enjoyment, which costs but a few pence or shillings, and for those objects, mostly of a sensual nature, the pence and shillings will certainly be spent, and absolutely wasted, unless they be secured before-hand. Although it should be at an advanced price, it is much better that the wife of a mechanic, who earns thirty shillings per week, should get a shawl, or a cloak, upon credit, which must be paid for by instalments of three shillings per week, than that she should wait until she has the ready money in her hand, a time which will never come; a ride to Greenwich, a goose for Sunday's dinner, or a debauch at the ale house, will steal away each three shillings as it glitters in her hand every Saturday night, unless it be secured before hand by an engagement to pay that cannot be evaded. The low class of shopkeepers, called tally-men, are not altogether so useless or mischievous,

as they may appear to be. They charge a high price for their goods; but they charge, in addition to the ordinary profits of stock, a commission for securing punctuality, and abstinence, among the great mass of their customers. Those who have the capacity to save money in their own pockets, get of course the advantage, they buy their cloak for twenty shillings instead of twenty-four; their virtue puts four shillings back into their pocket, while those who have not the virtue pay four shillings to him who has the virtue, uses it in their behalf, and lets them still have a cloak, which they would never have had if it had depended entirely upon themselves.

Very few working people, especially among the agricultural labourers, would have a watch in their pocket, were it not for credit; it is true, they pay £4, instead of £3; £3 for the watch, £1 for the credit; but it is better that they should pay £1 to some one who takes care of their money for them every week, than that it should be left in their own hands to be wasted in frivolous or unwholesome sensual pleasures. It is hardly pertinent to the purpose, or some examples would strikingly illustrate the general inability of working people to take care of, and make a good use of, their own hard-earned money. In many places benevolent societies collect small weekly contributions for poor persons; at the end of the year the society adds from 30 to 50 per cent. to the sum so subscribed, and the contributor then receives a ticket to purchase *useful* articles, such as calicoes or flannels. The women, for they are the chief contributors, and usually mothers of families, say, the "money comes to them like a gift, they did not miss the 3d. or 4d. weekly, and they are sure if it had remained in their own hands it would have been all wasted, and in the cold weather they would have shivered without flannels." It is of course a great advantage, if kind persons can be found who will take the trouble to nurse the money of those who cannot nurse it themselves, and *pay* a commission rather than *charge* it; but as, in general, such services must be paid for, however much we may regret their necessity, it is better that there should be tally-men, credit, and warm clothes, rather than no tally-men, no credit, rags and gin.

It is stated in Mr. Chadwick's curious and singularly instructive report on the economics of the poorer classes, "that a grocer residing in London says, that these persons come every day, for example, for a quarter of an ounce of tea for breakfast; this they do though in regular employment, and receiving their wages weekly. To estimate their loss by this mode of purchasing, he pointed out, that in a pound of tea they have to pay him, firstly, for the labour of weighing sixty-four times instead of *once*: secondly, for the additional quantity of paper used in wrapping the tea. The paper which will wrap up one pound of tea, will wrap up only sixteen quarter ounces; consequently the purchaser of sixty-four quarter ounces must pay extra for the wrappers of forty-eight quarter ounces. Altogether, he considers the labouring man pays not less than six-pence a pound, or the value of a pound or a pound and a half of meat extra, for every pound of low priced tea he purchases. Nor is this the only loss. He is accustomed to consume the whole quantity purchased; though a less quantity might often suffice, all goes into the pot; as he will not leave, or as he calls it "waste so small a quantity." This purchasing in such small quantities is not all loss, as the honest grocer reports, the grocer takes care of the labouring man's tea, and doles



it out in small quantities, charging of course for his trouble. The truth is, if the man *could* exercise abstinence enough to save up money to buy a pound of tea at a time, the probability is, that having a large bulk to go to, the whole would be consumed in much less than the allotted time, and he would be a great loser. Thrifty house-wives have found, by experience, that it is bad economy to buy goods in large quantities, as the consumption is so much greater. A firkin of butter, although it may cost a half-penny per lb. less than if bought by the pound, will be more expensive to the family, even although it should be kept under lock and key, and doled out in the proper weekly portions. The knowledge among the domestics, that more is *in* the house, tempts to a more prodigal consumption. More is always consumed from a large bulk than from a small one. A small tradesman and his wife, who had raised themselves in the world by industry, stated, that, as a matter of economy, they never kept wine or spirits in the house, but always bought those tempting articles as they wanted them, and although the price might be higher, the consumption was less. These facts illustrate the feeble controlling power over the appetites, which the numerous untrained mass are capable of exerting. Can it be safe then to deprive these people of any opportunity that offers, of putting themselves under the dire necessity to master those appetites? Safe to weaken a single penalty that is now apportioned to, the unjust gratification of those appetites at the expense of another? Safe for the legislator to declare from high places, that this gratification of the appetites, at the expense of another, in the way in which it usually manifests itself by not paying debts, must be assumed misfortune and not fault?

Objects of still higher luxury would hardly be enjoyed by many of the middle classes, if credit did not place them in a situation wherein they must deny themselves instant small enjoyments. When it is considered how large a proportion these persons bear to the whole mass of mankind, benefit is conferred by an engagement which compels the habit of abstinence from instant pleasure; and which educates a taste for the comforts of life, by supplying them, as it were, in spite of themselves, with the sole means by which they can be obtained. Appetite for comforts and luxuries, increases by the food it feeds on; a watch suggests other wants; the possession of a watch by honest means advances its possessor in the scale of society, and certainly makes him a man who has something to lose. Watchmakers give credit; gin-shop people give none. If your Lordship thinks it better that working people should appropriate their spare shillings to the purchase of a watch on credit, than to the obtaining quarterns of gin for ready money, you must not remove, but increase, the securities to the credit-giving watchmaker, or else he will turn ready-money gin seller. Before three pounds will be saved up to pay ready money for a watch, thirty times three pounds will be spent in gin. Watches are persistent wealth, gin is evanescent wealth; it is present for an instant, and then with health gone for ever; the more the watches, the more the wealth in the community; credit therefore aids the production of wealth. Some regard is due to the moral effects which ensue from a system of credit; that man is fixed to so many weeks of steady industry, who must pay for the comfort he has already in possession; when he has paid for that, he will want another comfort, and will be fixed to his bench a few more weeks to pay for that.

The men whose desires are few, work but few days, and idle and drink away the rest of their time; increase their desires, put them in a situation, that alone in which from their infirmity they can gratify their desires, a situation in which extrinsic authority compels abstinence, and you stimulate their industry. Enforce their industry, you improve their habits of steady application, and advance them as moral beings. This is no refinement; I know much of the great uneducated mass, the million of mankind, they are so infirm of purpose, so weak against the temptation to immediate sensual pleasures; that they require almost the treatment and control of children; "when they would do good, evil is present with them that they cannot."

There is little credit and little wealth in France; in that country the desires for objects of comfort are not so strong as those for ease or trifling recreation. The absence of wealth, and the absence of enduring industry, are very much attributable to the absence of credit. It is credit which gives impulsion to industry, and enforces abstinence. It is capital which allows credit to be given; it is industry and abstinence which create every accession to capital; whatever weakens the securities to credit, diminishes the production and accumulation of capital.

Want of confidence during the late commercial crisis stopped production, and therefore stopped the demand for labour; large manufacturers were afraid to entrust their goods in the hands of merchants and wholesale dealers. The want of confidence produced by this Bill, will, if its friends be true prophets, produce the like crisis; many of the securities now enjoyed, being removed, the retail man will fear to entrust the consumer; the wholesale man will fear to entrust the retail man; demand for all the ordinary articles of comfort and luxury will stop; the goods of the wholesale dealer will lie in his warehouse; the looms of the manufacturer will be idle, and the *operative will starve*. General distrust being diffused through the land, all business will be dull, but the business of gin-selling for ready money.

The Bill is very unpopular among commercial people, and the petitions against it are very numerous; to meet this objection, your Lordship intimates, that these persons are not the best qualified to judge what is good for themselves, or of the tendency of legal regulations upon persons of their own class. I am not inclined to set a very high estimate upon the intelligence of traders generally, and I have had little opportunity of making a comparison with that enjoyed by the higher class; but it does appear, that your Lordship is singularly unfortunate in the case you have selected, to shew up the incapacity of the tradespeople. You instance the penny stamp on the newspapers, which has, it is said, very much retarded the good that was expected to follow the reduction of price, the retention of which received the strong approbation, if not the urgent recommendation, of the newspaper people. Now the legislator must have been more credulous than any young tradesman in the Strand, if he took the evidence of newspaper proprietors to show any thing but the effects they calculated the proposed change would produce on their own interests, which interests, it has turned out they understood so well, that they have subsequently pocketed, as no doubt they anticipated, some thousands per annum by the change. The minister was outwitted, as he has so often been outwitted before, by trading people, that



it is strange their advice should ever be trusted, when their interests are put into competition with the public interests.\*

It is said that character will be of more value in the market of the world, in consequence of debts being rendered still more debts of honour than they now are. Character is a fallacious guide, all of a man's habits and conduct, that go to make up his character, are known to but few; they are to be learned with the greatest difficulty, and can be rendered no sure guide to ordinary creditors. A country tradesman may continue for years losing money at billiard tables or card parties, and his creditors in London or Manchester may be ignorant of his habits; he may be otherwise attentive to his business, keep good accounts, be sober, regular in his attendance at church; all those signs of good conduct, which are most obvious to the world, may be exact enough. To all appearance a man may be rich and frugal, yet when some crisis happens, he may be found really to have been thousands in debt for years past. A very large mercantile house failed during a recent crisis; up to the moment of their failure the partners enjoyed a very high reputation; they were among the saints of the earth; they were visitors of prisons, full of benevolence and sensibility for thieves; but on examination of their affairs, it was found they had little sensitiveness for the honest, the frugal, and their families, for they had been insolvent, living and wasting other people's property, for some years past.

A man's moral conduct is not easily ascertained; his pecuniary embarrassments can only be learned by a scrutinizing and inquisitorial investigation, which is too severe for any man to submit to, or to be enforced. There are certain indications of trustworthiness which the experienced tradesmen knows how to value, but these often deceive him; a few days since, a man who had paid his account for years with regularity, and who might have had credit to any amount from any wholesale dealer, suddenly absconded, to the astonishment of the whole town in which he lived. No scrutiny of character, no knowledge of habits, can be made or depended upon with sufficient certainty, to enable the creditor to be sure of the man he trusts; most certainly insufficient to justify the legislature in withdrawing any protection he has hitherto enjoyed, or in removing a single sanction against the debtor. Increase the power over property; increase the punishment due to delinquency, wherever it shall be proved; but do not render the law more feeble than it has hitherto been.

In conclusion, it is now necessary to set your Lordship right, respecting the creditor class. The kind of persons, whom your Lordship appears to consider creditors in general to be, are as few in number as

\* Many of the newspapers in advocating the present Bill, are not so keen in calculating of their own interests. Directly, they are not interested in the matter, the proprietors give no credit, (as I am informed,) whatever quantity of papers are taken away, are paid for on delivery. Not so, however, the large distributors of papers, especially those who send them into the country. I have heard that one of the largest of this class of persons in London declares, that he shall be obliged to reduce his business one third, perhaps one half, when this bill passes: that arrest is the only means by which he can compel payment from his country agents, who are persons of little capital. Another like tradesman has stated the same to me. If these results follow, the circulation of newspapers, particularly in the provinces, will be very much diminished. It is of much more importance that the provinces should be fed by the London newspapers, although they admit of improvement, than that they should devour their own home made commodities.

it has been shown that kind of debtors are whom you take to constitute the whole debtor class. Some creditors may be found rapacious and reckless, who inveigle persons to become their debtors, merely to harrass them with law expenses; but these are few, indeed, compared with the whole body—too few for their conduct to be made the index of legislation. For one creditor who is even *illiberal*, to say nothing of his being unjust towards the debtor, an hundred may be found who are only too liberal for their own interest, no less than for the cause of public morality. The truth is, creditors are a long suffering race, slow to anger, ready to make peace, on almost any terms, however disadvantageous; when creditors do not err on the side of mercy, they deviate from their accustomed habit, and are urged by some scandalous fraud, extravagance, or obstinacy. All those insolvencies which are caused by real misfortune, receive from commercial creditors a degree of generous liberality, that probably no other men in society exercise. Their knowledge of the vicissitudes of commercial life, render them lenient, for they know not, with all their caution, how soon they may be compelled to beg liberality for themselves. A short time since, a correspondent fell into difficulties, occasioned, as was alledged and believed, by the misconduct of his son; he offered a dividend, which was accepted; the next day a credit account was opened with him on the usual terms, as if he had just paid twenty shillings in the pound. Liberality of this sort is common enough, harshness and severity are exceptions. The chief officers of the Bankruptcy Court, in the same breath that they testify how few are the cases of bankruptcy occasioned by real misfortune, and not by shameful misconduct, affirm of creditors, that they are a strangely liberal body of men, often surrendering claims, and consenting to take smaller dividends than they might enforce. If we place creditors in one lot, and debtors in another, justice and mercy will characterise the former, as often as fraud and improvidence will characterise the latter. Creditors seldom oppress debtors, or use them harshly. Creditors, as a body, are a superior class of men; those who are able to give credit are usually better men, possessing a higher morale, more intelligence, habits of far distant calculation, than the debtor who cannot pay; he is the converse of all this, and therefore without much more specific evidence, the presumption of the law should be in favour of the creditor; he is the storekeeper of the national treasure, the key must not be unadvisedly taken from him; the places wherein are stored all the curious products of men's skill, combined with their providence and abstinence, must not be left on the latch, because it is said the warder is apt to go to sleep on his own wealth, and it is necessary to render him incessantly watchful and vigilant, even in spite of himself, and because multitudes are ready to rush in, and snatch away portions of that wealth, without leaving any other portion in lieu thereof. If you wish, my Lord, to improve the now lax morality of the public, with regard to the *meum et tuum*, give a little *more protection* to the creditor, cast a little *more obloquy* upon the non-paying debtor, and *sacrifice* the lawyer; yes, my Lord, **SACRIFICE THE LAWYER**, throw him overboard, for he is the Jonah that keeps the ship in troubled waters. The coronetted gambler, the extravagant merchant or tradesman, the drunken mechanic, must all then submit to the same penalty, and the same dishonour. A man will then deem himself equally bound to pay a debt incurred on the race course, or with a tradesman in

Bond Street; both will be debts of honour, non-payment alike attended with loss of honour.

I can hardly express the dismay with which I regard the moral tendency of this bill. The laws under which they live, are a very material part of the moral education of a people. Educationists have not sufficiently understood this. All the training of the schools is as nothing, in teaching men their social duties, compared with legal institutions, and above all, the equal administration of them to the poor and to the rich. The value of the new poor-law in teaching the great multitude the two hardest lessons that they must learn, ere they will be masters of their own happiness, has not yet been sufficiently expounded. Severe as it may seem, they must learn to live in the daily and hourly habit of enduring labour, and of abstaining from the instant enjoyment of its fruits. The master virtues for them, and for all mankind are industry, providence, and self-dependence. The practice of these, can only be learned as mankind learn every thing else, by a two fold experience—first, of the good that follows observance, secondly, of the evil that follows neglect of them. The strict and impartial administration of that wise law, is supplying this experience by results painful in a few cases, salutary in all; but as if the good that a wise law is to effect upon morality, must be neutralized by the mischief of a foolish one, such a law is now about to be introduced, to proceed *pari passu* with the other, for the purpose of neutralizing its usefulness, intended again to remove the natural evils of indolence and improvidence, from the man upon whom they alone ought to fall, and place them upon the shoulders of him who least deserves to bear them. He who will not earn his bread, or he who will not husband it when earned, says the late law, shall no longer be allowed to feed at the nations' store-house; but he shall still, says the proposed law, be allowed to borrow the bread of another if he can, or, what is the same thing, to take his money or commodities on credit, and pay only if he find it convenient. Thus the sin of a dishonest act will only remain when the act is bunglingly performed; the vice of cheating will only consist in not being clever enough to make its delinquency counterfeit misfortune; reviving the morals of ancient Sparta, where not theft but its detection constituted crime.

I have the honour to be,

My Lord,

Your very obedient Servant,

J. H. ELLIOTT.

19, Loughboro' Road, Brixton,  
January 1st, 1838.



